

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
PECOS DIVISION

UNITED STATES OF AMERICA	* CRIMINAL ACTION NO.
	* PE:19-CR-774
VS.	*
	*
THOMAS ALAN ARTHUR	* April 4, 2023

BEFORE THE HONORABLE DAVID COUNTS  
RESENTENCING

APPEARANCES:

For the Government: Austin M. Berry, Esq.  
Department of Justice  
601 N. Loraine, Suite 398  
Midland, Texas 79701

For the Defendant: Lane Haygood, Esq.  
620 N. Grant, Suite 913  
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Court Reporter: Tamara D. Ross  
200 E Wall  
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transcript produced by computer-aided transcription.

1 PROCEEDINGS

2 THE COURT: The Court calls U.S. V Thomas  
3 Alan Arthur. This is PE:19-CR-774 today for  
4 resentencing.

5 MR. BERRY: Good morning, Your Honor.  
6 Austin Berry for the United States.

7 THE COURT: Good morning, Mr. Berry.

8 MR. HAYGOOD: Lane Haygood here on behalf  
9 of Mr. Arthur, Your Honor. We're present and ready.

10 THE COURT: Mr. Haygood, thank you. Good  
11 to see you as well. Mr. Arthur, you're Thomas Alan  
12 Arthur. Correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Right. I recognize you,  
15 Mr. Arthur. Mr. Haygood, do you continue to believe  
16 Mr. Arthur is competent?

17 MR. HAYGOOD: I do, Your Honor.

18 THE COURT: And have you reviewed with  
19 him the Presentence Investigation Report since the  
20 opinion came back from the Circuit?

21 MR. HAYGOOD: We have, Your Honor.

22 THE COURT: Mr. Arthur, you have reviewed  
23 this report. Is that right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Great.

1 Mr. Haygood, are there objections or corrections to the  
2 report?

3 MR. HAYGOOD: Sadly, Your Honor, I am  
4 bound by the law of the case doctrine at this point.  
5 So all of the objections that I would have, I think has  
6 been taken care of by appeal. So apart from my request  
7 for the Court regarding the -- or I don't think that  
8 the guidelines calculation is wrong per the guidelines.  
9 I'm going to request that the Court consider running  
10 these -- the sentences that the Court imposes  
11 concurrently, and I'm going to request that the Court  
12 issue the minimum sentence available for Counts VIII  
13 and IX. The minimum sentence for Count VIII and IX, of  
14 course, being equivalent to the maximum sentences for  
15 the remaining counts. I'm going to ask the Court run  
16 them concurrently, but I don't have any objections to  
17 the calculation of the guidelines.

18 THE COURT: Thank you. Mr. Berry, were  
19 there any objections or corrections from the Government  
20 today?

21 MR. BERRY: No, sir.

22 THE COURT: The Court's reviewed the  
23 Presentence Investigation Report prepared by Senior  
24 U.S. Probation Officer Kara Foster. I find the report  
25 to be accurate. I adopt it and the application of the

1 United States sentencing guidelines contained in the  
2 report. Find the total base offense level to be 42,  
3 criminal history category is 1. Count I is gone now,  
4 Mr. Arthur. Counts II through IX, we have a guideline  
5 -- guideline provisions or the range is 360 to 840  
6 months, bound, of course, by a statutory maximum of  
7 five years on Counts II through VII. Count VIII is  
8 five to 20 years, as is Count IX. There's a -- let's  
9 see. One to three years supervised release in each  
10 count, Counts II through IX. We have a fine --  
11 ineligible for probation. Fine availability of \$50,000  
12 to \$250,000. And a total -- well, mandatory special  
13 assessment of \$100 per count. That total is \$800. No  
14 JVTA and no AVAA assessment. Mr. Haygood, what would  
15 you have the Court consider?

16 MR. HAYGOOD: Yes, Your Honor. One of  
17 the things that we discussed in the 5th Circuit was  
18 whether this case was amenable to a disproportionate  
19 sentence claim, specifically in light of the 5th  
20 Circuit's 2008 decision, United States V. Ragland,  
21 where the Defendant received eight years in a total  
22 sentence. I understand that the Government's position  
23 is going to be the difference between this case and  
24 Ragland is that Ragland was a possession case, and this  
25 case is a distribution case. However, looking at the

1 remaining counts that are there, as I said, two of  
2 them, VIII and IX, are the only ones that have a  
3 minimum offense level of five years. And so I would  
4 ask the Court to assess the minimum punishment for both  
5 of those and run those concurrently. And then of  
6 course, there's a five-year maximum in the remaining  
7 counts. I'd ask the Court to assess the five-year  
8 maximum in those and run them all concurrently.

9 As you can see, my client is here today  
10 in a wheelchair. He has had some health issues in  
11 prison. My fear is that anything above a five-year  
12 sentence for him is effectively a life sentence. The  
13 only family that he has remaining in this world is his  
14 sister, who is institutionalized, and his mother, who  
15 is very elderly.

16 I understand that the guidelines of  
17 1B1.313 do not apply to this Court in any sort of  
18 mandatory fashion, but I would ask the Court to  
19 consider his remaining health and that in assessing a  
20 sentence the Court believes is appropriate. As I've  
21 said, a lot of the arguments that I would make have  
22 been made and have been rejected by the 5th Circuit at  
23 this point, but I would ask the Court to consider  
24 running everything concurrently.

25 THE COURT: Thank you. Mr. Arthur,

1 anything you'd like to say?

2 THE DEFENDANT: Yes, Your Honor. I've  
3 had a lot of time to think about this. And I  
4 understand the Court needs to grant me something. I  
5 would ask the Court to grant me something that is  
6 survivable so I can see my mother again and spend the  
7 rest of my life taking care of my sister, who's the  
8 only family I have left in this world. I can do a lot  
9 of good on the outside, Your Honor.

10 THE COURT: Thank you. Anything else? I  
11 don't want to cut you off. Anything else?

12 THE DEFENDANT: That was it. Thank you,  
13 sir.

14 THE COURT: Thank you. And you've got  
15 surgery coming up?

16 THE DEFENDANT: Yes, sir. Two or three  
17 surgeries I still have left.

18 THE COURT: On the hip. Right?

19 THE DEFENDANT: The hip and a hand now.

20 THE COURT: Oh. A hand also.

21 THE DEFENDANT: I have a broken hand.

22 THE COURT: And those are set. Right?  
23 The surgeries are set, as far as what I heard?

24 THE DEFENDANT: My hip surgery was  
25 scheduled for this time, and it was delayed so I could

1 appear in this courtroom, but they will reschedule it.

2 THE COURT: Good. Okay. I wish you well  
3 with that. Good luck with the recovery. Mr. Berry?

4 MR. BERRY: Yes, Your Honor. I would  
5 like to save the Court time and rely largely on our  
6 sentencing memorandum that was filed and the arguments  
7 that we made back at that time. I think that there's  
8 really no reason that this Court should change the  
9 sentence from what it was before. The Court stat maxed  
10 (sic) out all the stories and ran them consecutive and  
11 then took one of the three images and stat maxed that,  
12 and then ran that consecutive, and that's how the Court  
13 got to 40 years.

14 Your Honor just so happened to pick the  
15 count that the Court -- the Court of Appeals ultimately  
16 reversed on, but the principle is the same. And that  
17 is that he was distributing the stories, he was running  
18 this website, millions of downloads. This was his  
19 income for 20 years.

20 And the image that Your Honor utilized  
21 for purposes of the sentence that happened to be  
22 reversed was honestly -- was the mildest of the three.  
23 Your Honor could have just as easily picked eight or  
24 nine as the image that should be -- the 20-year  
25 sentence on that one and run it consecutive. And

1 that's what I think the Court should do in this  
2 circumstance as well, is to say the landscape of the  
3 case has not changed. It's not like the Court of  
4 Appeals gutted the case and said that this was --  
5 dismissed so many counts. This was one of three  
6 images. And this Court could just as easily say well,  
7 now, I choose to sentence on -- make that 20 years on  
8 VIII or IX.

9           Your Honor did not do a statutory maximum  
10 sentence. Your Honor did not give the most number of  
11 years it possibly could. As the PSR makes clear, it  
12 could be up to -- I think it's 840 or something like  
13 that months. And Your Honor thought about it and gave  
14 a sentence in between the minimum and the maximum that  
15 was available, and we believe that that was an  
16 appropriate sentence at the time.

17           The Court of Appeals passed no judgment  
18 on the reasonableness of the 40-year sentence. It just  
19 simply under it -- the law, an obscenity, they didn't  
20 have to defer to the jury's judgment on the images, and  
21 so they took an independent review and decided one  
22 didn't meet their view of what counted as obscenity.  
23 And everybody can differ from about that, and that can  
24 be -- they're right because they're final. They're not  
25 final because they're right. And I think that the



1 Court should just go ahead and issue the exact same  
2 sentence, just applying that to VIII or IX. We're not  
3 asking for more than the 40 years previously.

4 THE COURT: Thank you. The Court does  
5 not depart from the recommended sentence. Pursuant to  
6 the Sentencing Reform Act of 1984, which I have  
7 considered in an advisory capacity, and the sentencing  
8 factors set forth in 18 USC section 3553(a), which I  
9 have considered in arriving at a reasonable sentence, I  
10 find the guideline range in this case to be fair and  
11 reasonable. The Defendant is placed in the custody of  
12 the United States Bureau of Prisons to serve a term of  
13 imprisonment as follows in each count: As to Count II,  
14 60 months. As to Count III, 60 months, that term to  
15 run consecutively to the term of imprisonment assessed  
16 in Count II. Count IV, 60 months to run consecutively  
17 to the term of imprisonment assessed in Count III.  
18 Count V, 60 months to run consecutively to the term of  
19 imprisonment assessed in Count IV. Count VI, 60 months  
20 to run consecutively to the term of imprisonment  
21 assessed in Count V. Count VII, 60 months to run  
22 consecutively to the term of imprisonment assessed in  
23 Count VI. Count VIII, 120 months to run consecutively  
24 to the term of imprisonment assessed in Count VII. And  
25 Count IX, 60 months to run concurrently with count --

1 the term assessed in Count VIII.

2           Upon release from the United States  
3 Bureau of Prisons, you're placed on supervised release  
4 to serve a term of three years in each and every count.  
5 Those terms all to run concurrently, one with the  
6 other. The standard and mandatory conditions of  
7 supervision are imposed. Additionally, the Court will  
8 order that the Defendant comply with the special  
9 conditions that are listed in the presentence report on  
10 page 25, paragraphs 118 to 120, which will impose  
11 conditions that the Defendant shall not view or possess  
12 any visual depiction, including any photograph, film,  
13 video, picture, or computer, computer-generated image  
14 or picture, whether made or produced by electronic,  
15 mechanical, or other means of sexually explicit  
16 conduct. Of course, there's definitions as related  
17 thereto in 18 USC section 2256. Also, that the  
18 Defendant shall not have direct contact with any child  
19 the Defendant knows or reasonably should know to  
20 be under the age of 18 without permission of the  
21 probation officer. All that goes with that, of course.  
22 And also, the Defendant shall submit to the search  
23 condition of supervision within the Western District of  
24 Texas.

25           There is a \$50,000 fine that is imposed,

1 which is the minimum fine range, and that will be the  
2 total fine, is \$50,000. A mandatory special assessment  
3 pursuant to the Victims of Crime Act is imposed in each  
4 count of \$100, totalling \$800. And your presentence  
5 report will be sealed.

6 You have the real to appeal. Assuming  
7 you are not giving up that right, you must file notice  
8 of appeal in writing within 14 days of entry of the  
9 judgment. If you're unable to afford the appellate  
10 costs, those services will be provided at no expense to  
11 you. Mr. Haygood, anything further on behalf of  
12 Mr. Arthur today?

13 MR. HAYGOOD: Not at this time, Your  
14 Honor.

15 THE COURT: Mr. Berry?

16 MR. BERRY: Yes, Your Honor. The asset  
17 forfeiture folks have asked me -- there was -- Your  
18 Honor entered a preliminary order of forfeiture,  
19 document number 109, on January 27th, 2021. And just  
20 as in the previous sentence, we would ask that you make  
21 that a final order of forfeiture regarding those  
22 properties, real and personal.

23 THE COURT: Any objection, Mr. Haygood?

24 MR. HAYGOOD: No, Your Honor.

25 THE COURT: The properties listed in

1 document 109 are forfeited. Thank you. Mr. Arthur,  
2 good luck to you. I'll remand you to the custody of  
3 the United States Marshals to serve your sentences.  
4 Thank you. Thank you to the attorneys.

5 MR. BERRY: Thank you, Judge.

6 (Hearing concluded.)  
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1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )  
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4 I, Tamara D. Ross, Official Court Reporter for the  
5 United States District Court, Western District of  
6 Texas, do certify that the foregoing is a correct  
7 transcript from the record of proceedings in the  
8 above-entitled matter.

9 I certify that the transcript fees and format comply  
10 with those prescribed by the Court and Judicial  
11 Conference of the United States.

12 Certified to by me this 12th day of June, 2023.

13  
14 /s/ Tamara D. Ross  
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